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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-186043

DATE: October 4, 1976

MATTER OF: Payment for annual leave - Exempted officer who
retires while serving in a Presidential appointment

DIGEST: Foreign Service officer with accumulated annual leave who, without a break in service, was appointed ambassador (an exempted position in which no such leave is earned) in 1972 and retired as Foreign Service officer in 1975 but remained ambassador until 1976 may not be paid lump sum for accrued annual leave upon his retirement as Foreign Service officer because statute and State Department regulations preclude such payment until exempt officer is separated from Federal service or transfers to specified positions.

This action is in response to a letter dated February 23, 1976, from Ruth W. Robinson, Chief, Payroll and Retirement Accounts Branch of the Fiscal Division of the Department of State, requesting an advance decision concerning the lump-sum leave payment entitlement of a Foreign Service officer.

On January 7, 1972, without a break in service a Foreign Service officer accepted a Presidential appointment as an ambassador, a position in which annual leave is not earned. He voluntarily retired from his Foreign Service position on September 30, 1975, while continuing to serve as ambassador until January 20, 1976. The question presented is whether he should be paid the lump-sum payment for annual leave accrued as of January 6, 1972, immediately following his retirement as a Foreign Service officer or immediately following his resignation as ambassador.

The State Department's present regulations (chapter 4, Volume 3, Foreign Affairs Manual) provide in section 492 that a lump-sum payment for accumulated and current accrued annual leave shall be paid when an employee is separated from the Foreign Service or ceases to be a leave earner, except as provided in section 483. Section 483, which governs the disposition of leave credits, states in pertinent part:

"Any annual and sick leave balances to the credit of an exempt officer as of * * * the date * * * on which his exempted service

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began, remains in a suspended status and shall be held to his credit until:

"a. He is separated from Federal service for any reason, while serving as an exempt officer at which time a lump-sum payment for such annual leave shall be made at the rate of compensation being received by such officer immediately before his exemption; or

"b. He transfers to a position under a statutory leave system other than the leave system provided by 5 U.S.C. 6301-6311 * * *; or

"c. He transfers to a position subject to the leave laws without a break in service * * *."

That regulation is consistent with the requirements of the applicable statutory provision in 5 U.S.C. § 5551(b), id. 6301. Also to same effect see subchapter 2-2b(2) of Book 550, Federal Personnel Manual Supplement 990-2.

The statute and cited regulations clearly preclude the payment of a lump sum for accrued annual leave until the exempt officer is separated from Federal service. The Foreign Service officer's retirement did not terminate his Federal service since he continued to serve under his appointment as ambassador. Thus, he was not separated from Federal service until he resigned his ambassadorial post on January 20, 1976.

Accordingly, the exempt officer in the instant case was not eligible to be paid the lump-sum payment for accrued annual leave until the date of his separation from Federal service.

Deputy


Comptroller General
of the United States